

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 71 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

NAJBHAI SELARBHAI KATHI

Versus

CHETNA NAJBHAI (MINOR)

Appearance:

MR PJ KANABAR for Petitioner
MR PJ VYAS for Respondent No. 1
NOTICE SERVED for Respondent No. 2
PUBLIC PROSECUTOR for Respondent No. 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 02/03/98

ORAL JUDGEMENT

Learned APP Mr.AJ Desai waives service on behalf of respondent no.3. Learned Advocate Mr.P.J.Vyas who has appeared in response to earlier notice on behalf of respondent no.2 waives service of rule. By consent of learned advocates the matter is finally heard.

2. Initially the petitioner has filed Cri.Misc.Appl. to challenge the order passed by the learned Sessions Judge, Amreli in the proceedings of Cri.Misc.Appl.No. 130/97, whereby the application to condone the delay in filing revision application against the order of learned JMFC passed in Cri.Misc.Appl.No.236/93 passed on 28.7.95 has been rejected. That after the issuance of rule, the petitioner has converted it into Special Cri. Application No.71/98 under the leave granted by the court.

3. The petitioner is the husband of respondent no.2 wife and father of respondent no.1, minor girl. On account of matrimonial dispute between the petitioner and respondent no.2, the respondent no.2 separated from the matrimonial house and preferred a Criminal Misc.appl.No.236/93 in the court of JMFC, Dhari under Section 125 of the CRPC to claim maintenance for herself as well as for minor daughter respondent no.1. That vide order dated 28.7.95, learned JMFC, Dhari allowed the application and awarded the amount of Rs.400/- p.m., to respondent no.2 wife and Rs.200 p.m. to respondent no.1 minor daughter from the date of application and the cost of Rs.200/-. That being aggrieved and dissatisfied by the said order of JMFC, Dhari, the petitioner desired to file revision application in the court of Sessions Judge, Amreli, District Amreli. It is the case of the petitioner that the petitioner did not know the date of the pronouncement of the order and thereby it could not be decided whether the proposed revision application to be filed in the Sessions court is within the prescribed period of limitation or not? That after obtaining the certified copy, the petitioner filed said Cri. Misc. Appl.No.130/97 in the court of Sessions Judge, Amreli, Dist.Amreli with a prayer to condone the delay in presenting the said revision application.

4. That the learned Sessions Judge, Amreli decided the Cri.Misc.Appl.No.130/97 by order dated 21.5.97 and rejected the same on the ground that petitioner has failed to explain the abnormal delay of pretty long period. According to the impugned order the criminal misc. application awarding maintenance to the respondents was decided on 28.7.95 and thereafter the petitioner had applied for certified copy on 3.8.95. That the certified copy was ready for delivery on the same day. However, the criminal Misc. Application alongwith proposed revision application has been filed on 12.3.97. Thus, in view of the learned Sessions Judge said delay is an abnormal delay of a pretty long period for which the explanation given by the petitioner to the

effect that he had no knowledge of the date of the pronouncement of the judgement of the proceedings of Criminal Miscellaneous Application No.236/93 cannot be said to be just or proper explanation.

5. I have gone through the material produced on record and in my opinion, in the facts and circumstances of the present case ends of justice could meet if said order of rejecting Cri.Misc.Appl.No.130/97 is set aside and quashed and the matter is remanded back for disposal in accordance with law by imposing appropriate costs on the petitioner to be paid to the respondent wife and his daughter. Considering the amount of maintenance awarded by the learned JMFC, Dhari in my opinion Rs.1000/- would be the appropriate amount of costs.

6. On the basis of above stated discussions, the order passed by the learned Sessions Judge, Amreli dated 21.5.97 in the proceedings of Cri.Misc.Appl.No.130/97 rejecting the application to condone the delay is hereby set aside and quashed. The delay in filing proposed revision application against the order dated 28.7.95 passed by the learned JMFC, Dhari in the proceedings of Cri.Misc.Appl.No.236/93 is condoned on condition precedent that petitioner shall pay the costs of Rs.1000/- to respondent no.2 for herself and on behalf of respondent no.1 within 2 weeks hereof. The amounts of costs shall be deposited in the Trial Court. The learned Sessions Judge, District Amreli is directed to take on file the proposed revision application presented by the petitioner alongwith Cri.Misc.Appl.No.130/97 and to decide the same in accordance with law including the application of the present petitioner for stay of the orders passed in Cr.Misc.Appl.No.236/93. rule is made absolute accordingly. Respondent no.2 shall be at liberty to withdraw the amount of costs as well as maintenance deposited by present petitioner under the order passed in the present matter. In the facts and circumstances of the case there shall be no costs for the present proceedings.

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